

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN ASSEMBLY JULY 2, 2003

SENATE BILL

No. 534

Introduced by Senator Romero

(Coauthors: Senators Alarcon, Escutia, Kuehl, and Soto)

(Coauthors: Assembly Members Koretz, Oropeza, and Yee)

February 20, 2003

An act to add Section 6333 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 534, as amended, Romero. Employment rights.

Under existing law, the Occupational Safety and Health Standards Board may adopt occupational safety and health standards.

This bill would prohibit the use of a short-handled hand tool in agricultural operations, if the use of the tool requires an employee to stoop, kneel, or squat, ~~and would further prohibit the use of a long-handled hand tool in a stooped, kneeling, or squatting position~~ *except when the employer can demonstrate long-handled tools, or other alternatives can reasonably be expected to cause significantly greater damage to crops, as specified and determined by the Division of Occupational Safety and Health.* The bill would further require employers to limit hand weeding, thinning, or hot-capping and to provide employees with protective equipment and additional rest breaks if kneeling is required. The bill would further provide that a violation of the bill would be deemed to be a violation of an occupational safety and health standard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature hereby finds and declares all of*
2 *the following:*
3 (a) *The use of the short-handled hoe, known as “el cortito”*
4 *(“the short one”), was banned in 1975 by the California Supreme*
5 *Court after uncontradicted medical evidence established it caused*
6 *debilitating back injuries to farmworkers.*
7 (b) *A resurgence in the use of illegal short-handled tools in the*
8 *early 1990’s resulted in enforcement activity by the Division of*
9 *Occupational Safety and Health, which minimized this practice,*
10 *but the division also permitted employers to require hand weeding*
11 *instead, even if alternative long-handled tools could have been*
12 *used.*
13 (c) *In 1993, the Medical Unit of the division evaluated hand*
14 *weeding in Ventura County and recommended that this*
15 *enforcement loophole be closed, citing the added stress on the*
16 *backs of farmworkers which resulted from being 6 to 12 inches*
17 *closer to the ground than when using a short-handled tool.*
18 (d) *A number of legislative and administrative efforts to close*
19 *the loophole have been undertaken since 1993, but all have failed*
20 *to arrive at a 100-percent consensus with agricultural industry*
21 *groups, some of which continue to express opposition to the nearly*
22 *30-year ban on short-handled tools.*
23 (e) *This legislation is intended to close the hand weeding*
24 *loophole to the short-handled tool ban by generally prohibiting*
25 *hand weeding where reasonably available long-handled tools or*
26 *other alternatives can be used without causing significant damage*
27 *to a crop or to closely integrated production materials or irrigation*
28 *systems, or where a crop has otherwise been specifically exempted*
29 *because of narrow circumstances unique to that crop.*
30 (f) *Therefore, the Legislature affirms that the division should be*
31 *given broad discretion to implement this long overdue and critical*
32 *legislation, and specifically provides additional discretion to the*
33 *division when making determinations related to significant*
34 *damage to organic crops.*
35 SEC. 2. *Section 6333 is added to the Labor Code, to read:*

6333. (a) *As used in this section, the following terms have the following meanings:*

(1) *An “appropriate” long-handled hand tool means one that is designed to allow for weeding, thinning, or hot-capping of a particular crop in a manner that does not require the employee to stoop, kneel, or squat.*

(2) *“Crop” means any agricultural or horticultural commodity.*

(3) *“Proper use” of a tool means use of a tool in the manner generally employed by agricultural employees that is consistent with its intended design and purpose.*

(4) *A “reasonably available” long-handled hand tool means one available for purchase from sources generally known to members of the agricultural industry and does not preclude custom-made tools.*

(5) *A “reasonably available mechanical or cultural non-pesticide, non-hand weeding, thinning, or hot-capping alternative” means one that the employer knew or should have known was available and was not cost-prohibitive to implement.*

(b) *Hand-held tools shall be kept in good condition and be safely stored.*

~~(b)~~

(c) *The use of a short-handled hoe or any other short-handled tool is prohibited in agricultural operations, as defined in Section 3437 of Title 8 of the California Code of Regulations, for weeding, thinning, or hot-capping when the tool is used in a stooped, kneeling, or squatting position. Employees engaged in weeding, thinning, or hot-capping shall use a long-handled hand tool, as defined in Section 3437 of Title 8 of the California Code of Regulations, ~~provided by the employer~~. Long-handled tools are required except when one or more of the following conditions applies:*

(1) *The work is performed in a manner that does not require an employee to stoop, kneel, or squat.*

(2) (A) ~~Crops are~~ *Employees are weeding a crop that is grown under continuous plastic mulch or woven cloth sheets.*

(B) *The exception provided in subparagraph (A) does not apply to ~~spaces~~ areas between crop beds or in any other ~~circumstance~~ areas where continuous plastic mulch or woven cloth sheets are not present, and does not apply when the use of an appropriate*

1 long-handled hand tool to weed ~~under or~~ near the continuous
2 plastic mulch or woven cloth sheets is possible *without causing*
3 *significant damage to the mulch or woven cloth sheets.*

4 ~~(3) (A) The employer can demonstrate that proper use of an~~
5 ~~appropriate long-handled hand tool and any available mechanical~~
6 ~~or cultural non-hand-weeding alternative can reasonably be~~
7 ~~expected to significantly damage the crop at the crop's current~~
8 ~~state of development.~~

9 ~~(B) To meet the burden of proof required for the exception~~
10 ~~provided in subparagraph (A), an employer must be able to~~
11 ~~demonstrate all of the following:~~

12 ~~(i) There was a systematic effort to attempt to properly use each~~
13 ~~appropriate long-handled hand tool and each available~~
14 ~~non-hand-weeding alternative to weed or thin the field for which~~
15 ~~an exception is claimed.~~

16 ~~(ii) The attempt to use these tools and alternatives caused~~
17 ~~significant damage to the crop.~~

18 ~~(iii) The attempt was conducted in an area of the field which~~
19 ~~was representative of weed conditions observed throughout the~~
20 ~~entire field.~~

21 ~~(iv) Where weed conditions in the field permitted, appropriate~~
22 ~~long-handled hand tools or available non-hand-weeding~~
23 ~~alternatives are used at all times.~~

24 ~~(e) A long-handled hand tool used to weed, thin, or hot-cap~~
25 ~~shall not be used as a short-handled hand tool in a stooped,~~
26 ~~kneeling, or squatting position.~~

27 ~~(d) When paragraph (2) or (3) of subdivision (b) prevent the use~~
28 ~~of a long-handled hand tool, the employer shall do all of the~~
29 ~~following:~~

30 ~~(1) The employer shall prohibit employees from using a~~
31 ~~short-handled hand tool, as defined in Section 3437 of Title 8 of~~
32 ~~the California Code of Regulations, if the use of the tool requires~~
33 ~~an employee to stoop, kneel, or squat.~~

34 ~~(2) The employer shall reduce or eliminate the degree of hand~~
35 ~~weeding, thinning, or hot-capping required, by implementing~~
36 ~~available administrative or engineering controls, or both.~~

37 ~~(3) The employer shall provide personal protective equipment,~~
38 ~~including gloves and, if work is performed in a kneeling position,~~
39 ~~knee pads, and shall provide additional rest breaks during each~~
40 ~~four-hour shift.~~

~~(c) Nothing in this section is intended to prohibit brief, isolated hand weeding, thinning, or hot-capping that is incidental to the use of a long-handled hand tool, provided that the employee immediately returns to an erect, upright position and continues use of a long-handled hand tool after picking an occasional weed.~~

~~(f) A violation of this section shall be deemed to be a violation of an occupational safety and health standard within the meaning of Section 6305.~~

(3) (A) *The employer can demonstrate that proper use of a reasonably available and appropriate long-handled hand tool and any reasonably available mechanical or cultural non-pesticide, non-hand weeding, thinning, or hot-capping alternative can reasonably be expected to cause significantly greater damage than would be caused by hand weeding, thinning, or hot-capping to the particular crop planted in the entire field or in the area or areas in that field at the crop's current state of development, for which an exception is claimed, or the employer can demonstrate that materials or irrigation systems are so closely integrated with the particular crop at its current state of development that a reasonably available and appropriate long-handled hand tool could not be used without causing significant damage to the materials or irrigation systems.*

(B) *The division shall have broad discretion to determine whether an employer meets the burden of proof required for the exception provided in paragraph (A).*

(i) *In making a determination, the division shall consider at least both of the following factors:*

(I) *Whether there was a reasonable effort to attempt to properly use an appropriate long-handled hand tool and any available non-hand weeding, thinning, or hot-capping alternative to weed, thin, or hot-cap in the entire field or in the area or areas of the field for which an exception is claimed.*

(II) *Whether the attempt to use these tools and alternatives caused, causes, or would necessarily cause, significantly greater damage to the crop planted in the entire field or in the area or areas of the field at the crop's current state of development than did hand weeding, thinning, or hot-capping, and the attempt is or was conducted in the entire field or in the area or areas of the field for which the exemption is claimed.*

1 (ii) (I) After making one attempt pursuant to subclause (I) of
2 clause (i), nothing herein shall require an employer to make an
3 additional attempt where all of the following apply: the identical
4 crop is being produced under equivalent conditions in a field; that
5 crop is at a substantially similar state of development as the crop
6 for which the prior attempt was made; the weed conditions in the
7 entire field or in the area or areas of the field for which an attempt
8 would be made are substantially similar to those of the crop for
9 which the prior attempt was made; and the employer has made a
10 reasonable effort to reevaluate whether the degree of hand
11 weeding, thinning, or hot-capping required for that crop could be
12 reduced or eliminated by implementing either any reasonably
13 available new long-handled hand tools, and reasonably available
14 new administrative controls, or any reasonably available new
15 mechanical or cultural alternatives, consistent with the limitations
16 in paragraph (2) of subdivision (e).

17 (II) An employer may establish significantly greater damage
18 pursuant to subclause (I) or (II) of clause (i) by conducting a test
19 in an area representative of weeding, thinning, or hot-capping
20 conditions in the rest of the field or in the area or areas of the field
21 for which an exception is claimed. The test must be of sufficient size
22 to allow for an objective demonstration of the significantly greater
23 damage that can reasonably be expected to occur if a similar effort
24 to use required tools or alternatives was made in the entire field or
25 in all the areas of the field for which an exception is claimed.

26 (iii) The division shall consider the fact that a crop is certified
27 organic under applicable state or federal law, in determining
28 whether a significantly greater damage would be caused by the use
29 of required tools or alternatives than would be caused by hand
30 weeding, thinning, or hot-capping.

31 (C) Except as provided in subparagraphs (A) and (B),
32 appropriate long-handled hand tools or available non-hand
33 weeding, thinning, or hot-capping alternatives shall be used at all
34 times.

35 (4) The crop being produced is for planting seed to be used for
36 research development, production, or multiplication, and hand
37 weeding or thinning is required to eliminate off-type plants, meet
38 purity and germination standards required by law, or for other
39 plant selection purposes required to produce a particular seed
40 crop when any seed crop is produced by a seed labeler registered

pursuant to Section 52351 of the Food and Agricultural Code, a company producing flower seed for planting, or anyone producing or planting seed under contract by a third party for a registered seed labeler. The exemption granted by this paragraph pertains to fields dedicated only to producing planting seeds and does not apply to any non-seed crops grown by a registered seed labeler or a grower under contract with a registered seed labeler.

(5) The crop is being produced in containers with a diameter of 12 inches or less, or a container of comparable size, where proper use of a reasonably available and appropriate long-handled hand tool causes significant damage to the particular crop at its current state of development.

(d) A long handled hand tool used to weed, thin, or hot-cap shall not be used as a short-handled hand tool in a stooped, kneeling, or squatting position.

(e) When paragraph (2), (3), (4), or (5) of subdivision (c) prevents the use of a long-handled hand tool, the employer shall do all of the following:

(1) Prohibit employees from using a short-handled hand tool, as defined in Section 3437 of Title 8 of the California Code of Regulations, if the use of the tool requires an employee to stoop, kneel, or squat.

(2) Reduce or eliminate the degree of hand weeding, thinning, or hot-capping required, by implementing reasonably available administrative controls, or reasonably available mechanical or cultural non-pesticide, non-hand weeding, thinning, or hot-capping alternatives, or both. Nothing in this paragraph requires the use of genetically engineered crops, cost-prohibitive administrative controls, or cost-prohibitive mechanical or cultural alternatives.

(3) In addition to providing any other tools, equipment, or protective gear required for the performance of the work, provide personal protective equipment, including gloves and, if work is performed in a kneeling position, knee pads, and provide one compensated 10-minute rest break at the end of each two-hour work period in which the employee is required to perform hand weeding, thinning, or hot-capping pursuant to an exception permitted by this section.

- 1 (f) *Nothing in this section is intended to prohibit brief,*
2 *occasional hand weeding, thinning, or hot-capping that is*
3 *incidental to either of the following:*
- 4 (1) *The use of a long-handled hand tool, provided that the*
5 *employee immediately returns to an upright position and continues*
6 *use of a long-handled hand tool after picking an occasional weed.*
- 7 (2) *A non-hand weeding operation.*
- 8 (g) *An employer shall provide all hand tools used pursuant to*
9 *this section, in accordance with applicable orders of the Industrial*
10 *Welfare Commission.*
- 11 (h) *A violation of this section shall be deemed to be a violation*
12 *of an occupational safety and health standard within the meaning*
13 *of Section 6305.*

